

**CALIFORNIA DEPARTMENT OF CHILD SUPPORT SERVICES**

P.O. Box 419064, Rancho Cordova, CA 95741-9064



June 23, 2011

CSS LETTER: 11-08

ALL IV-D DIRECTORS  
ALL COUNTY ADMINISTRATIVE OFFICERS  
ALL BOARDS OF SUPERVISORS

Reason for this Transmittal

- ☒ State Law or Regulation Change
- ☐ Federal Law or Regulation Change
- ☐ Court Order or Settlement Change
- ☐ Clarification requested by One or More Counties
- ☒ Initiated by DCSS

SUBJECT: CHAPTERED LEGISLATION, SENATE BILL 1355, PETITION TO SET  
ASIDE ARREARS FOR PERIODS OF INCARCERATION OR  
INVOLUNTARY INSTITUTIONALIZATION

REFERENCE: FAMILY CODE SECTION 4007.5 AND SENATE BILL 1355 (CHAPTER  
495, STATUTES OF 2010), EFFECTIVE JULY 1, 2011 TO JULY 1,  
2015

The purpose of this letter is to communicate statewide policy to local child support agencies (LCSAs) regarding Senate Bill (SB) 1355 which added Section 4007.5 to the Family Code (FC). This section is applicable to all child support orders being enforced by LCSAs issued or modified on or after July 1, 2011.

Family Code 4007.5 provides that child support shall be suspended for any period exceeding 90 consecutive days in which an obligor is incarcerated or involuntarily institutionalized. Courts may be petitioned to adjust arrears that accrued during such periods. The provisions of this section are in effect until July 1, 2015, and include:

- The statute provides for an adjustment of arrears should they accrue during periods of incarceration or institutionalization, subject to court approval.
- The obligor may petition the court under FC Section 4007.5 to request arrears adjustment.
- The court may adjust the arrears from the first day of incarceration, forward, if an obligor is incarcerated/institutionalized for more than 90 consecutive days.
- Incarceration or involuntary institutionalization includes, but is not limited to, involuntary confinement to a state prison, county jail, juvenile facility, or mental health facility.

To ensure compliance with the provisions of FC 4007.5 the Judicial Council has updated the following forms with supporting language:

- FL-530 (UIFSA Judgment).
- FL-615 (Stipulation for Judgment).
- FL-625 (Stipulation and Order).
- FL-630 (Judgment).
- FL-665 (Findings and Recommendation of Commissioner).
- FL-676 (Determination of Arrearages; Adjustment due to Incarceration added).
- FL-687 (Order after Hearing).
- FL-692 (Minutes and Order).

It is anticipated the Judicial Council forms will be available by July 1, 2011. Until the forms are available in the Child Support Enforcement (CSE) system, LCSAs shall include the following language on orders issued on or after July 1, 2011 (new or modified).

“As provided in FC Section 4007.5, the obligation of the person ordered to pay support will be temporarily suspended for any period after the first 90 consecutive days in which the person ordered to pay support is incarcerated or involuntarily institutionalized, unless that person has the ability to pay support during that time or has committed certain crimes. Immediately after the person ordered to pay support is released from incarceration or involuntary institutionalization, the support order will restart in the same amount as it was before it was temporarily suspended.”

#### **Obligor is Incarcerated/Institutionalized**

Pursuant to current review and adjustment regulations, when an LCSA becomes aware that an obligor is incarcerated or involuntarily institutionalized and the period of confinement is expected to last more than 90 consecutive days, the LCSA should:

- Verify the incarceration or institutionalization.
- Verify that the obligor has no ability to pay child support.
- Establish a zero child support order or review to determine if an existing order needs to be modified.
- Monitor the case to determine release dates and modify the child support order, where appropriate.

### **Arrears Adjustment Pursuant to FC Section 4007.5**

Either during incarceration/institutionalization or upon release, the obligor may request to have the court adjust the obligor's arrears if:

- The child support order was issued or modified on or after July 1, 2011.
- The obligor was/has been incarcerated/institutionalized for more than 90 consecutive days.
- The obligor has/had no ability to pay child support during the period of incarceration/institutionalization.
- The obligor is/was not incarcerated for: domestic violence against the obligee or supported child; failure to pay support; or an act that could be enjoined by a protective order pursuant to FC Section 6320.

The attached scenarios provide information to assist LCSAs in implementing this statute under specific circumstances. Training will be provided within two weeks of the release of this letter.

If you have any questions or concerns regarding this matter, please contact Cindi Pocoroba at (916) 464-5883.

Sincerely,

/os/

BILL OTTERBECK  
Deputy Director  
Child Support Services Division

Attachment

### **SB 1355 Scenarios**

Question 1: What is the procedure for handling cases where the obligor was incarcerated/institutionalized before July 1, 2011, and a new order is established after July 1, 2011?

Answer 1: Seek to establish a zero order for current support pursuant to CSS 05-35. Include FC Section 4007.5 notice language in the new order.

The following assumptions apply to question 2 through 5:

- An LCSA is providing enforcement services.
- Incarceration/institutionalization has been verified.
- The obligor has/had no ability to pay.
- The obligor's confinement exceeds 90 days.
- The confinement is/was for any reason other than those listed in FC Section 4007.5(d).

Question 2: What is the procedure for handling cases when the order was issued on or after July 1, 2011, and the obligor subsequently becomes incarcerated or institutionalized?

Answer 2: Request to modify support to zero, where appropriate. If there are arrears for the time period between when the obligor becomes incarcerated/institutionalized and when a motion to modify prospective support is filed, the obligor may petition the court to adjust arrears under FC Section 4007.5.

Question 3: How will cases be handled when there is an order issued prior to July 1, 2011, and there is subsequent incarceration/institutionalization?

Answer 3: If there is additional language regarding incarceration/institutionalization in the order, relief is included in that order until the order is modified. At that point, the LCSA would include FC Section 4007.5 notice language in the newly issued order.

If there is no additional language regarding incarceration/institutionalization in the order, the LCSA should seek to modify current support to zero where appropriate. The obligor is not entitled to FC Section 4007.5 relief for periods of incarceration/institutionalization prior to modification of the order.

Question 4: What about cases where an obligor has multiple periods of qualifying incarceration?

Answer 4: The obligor may include multiple time periods in one petition.

Question 5: Can an obligor petition for relief of arrears after the sunset date of FC Section 4007.5 for a period of incarceration/institutionalization that occurred prior to its sunset date?

Answer 5: No. The statute provides that it is only “in effect” from July 1, 2011, to July 1, 2015. Once the statute sunsets, there is no statute under which to request relief.